

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MCC Iowa LLC)	
)	
Mediacom Illinois LLC)	CSR 6812-E
)	
Petition for Determination of)	
Effective Competition in 14 Local)	
Franchise Areas in Illinois)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 23, 2007

Released: July 25, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. MCC Iowa LLC and Mediacom Illinois LLC (“Mediacom”) have filed a petition with the Commission pursuant to 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that their cable television systems serving 14 Illinois communities (the “Communities”) are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”), and are therefore exempt from rate regulation.¹ No oppositions to the petition were filed. We grant the petition finding that Mediacom is subject to effective competition in all of the Communities.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,² as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission’s rules.³ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁴

¹ 47 C.F.R. §§ 76.7, 76.905(b)(2), 76.907; 47 U.S.C. § 543(a)(1).

² 47 C.F.R. § 76.906.

³ See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

⁴ See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD"), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁵ Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. ("DirecTV") and DISH Network ("Dish") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁶ The two DBS providers' subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV was the second largest, and DISH the third largest, MVPD provider during that period.⁷ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the Communities are DBS subscribers, we conclude that the population of the Communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁸ We find further that Mediacom has demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Mediacom sought to determine the competing provider penetration in the Communities by utilizing a Satellite Broadcasting and Communications Association ("SBCA") subscriber tracking report that identified the number of subscribers attributable to the DBS subscribers within the Communities on a Zip+4 zip code basis.⁹ Mediacom asserts that it is the largest MVPD in Aledo, Cambridge, Cordova,

⁵ 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁶ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁷ *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 21 FCC Rcd 2503, ¶¶ 6, 13, 72-73 (2006).

⁸ *See* 47 C.F.R. § 76.905(g).

⁹ Mediacom Petition at 7, Exhibits E and F. The exhibits provided by Mediacom did not provide the list of zip codes associated with the SBCA reports. On February 23, 2007, the Media Bureau requested additional information from Mediacom regarding its SBCA submissions. *See* Letter to Bruce J. Gluckman, Mediacom Communications Corporation, from Steven A. Broecker, Deputy Chief, Policy Division, Media Bureau (February 23, 2007). On March 15, 2007, Mediacom submitted an erratum to its petition with the list of zip codes used by SBCA in preparing its subscriber report for Mediacom. *See* Erratum and Exhibits submitted by James McKnight, Mediacom (March 15, 2007). The Communities did not oppose, or otherwise respond, to Mediacom's erratum. In its erratum, Mediacom also notes that it wants to correct its petition by replacing the word "Andover" in the first paragraph 8 of the petition with the word "Cambridge." Mediacom states that the petition incorrectly says that Andover has a DBS penetration rate of 17.14%. Mediacom asserts that it is Cambridge that has this DBS penetration level and Andover was never a

(continued...)

Geneseo, Hillsdale, Neponset, Port Byron, Sherrard, Viola, and the Village of Walnut, Illinois because it has compared its residential subscriber totals for the Communities against the aggregate totals of the DBS providers' subscribers.¹⁰

5. Based upon the aggregate DBS subscriber penetration levels, calculated using 2000 Census household data, we find that Mediacom has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest, exceeds 15 percent of the households in the above-noted Communities.¹¹ Therefore, the second prong of the competing provider test is satisfied with respect to all of these Communities. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that its cable systems serving the Communities are subject to competing provider effective competition.

B. Low Penetration Effective Competition

6. Section 623(1)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if “fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system.”¹² Mediacom provided information showing that less than 30 percent of the households in the following Communities subscribe to their cable services: the unincorporated areas of Henry County, Illinois, which include the unnamed areas, the area adjacent to the City of East Moline, and the area commonly known as Osco (“Henry”); the unincorporated areas of Rock Island County, Illinois, which include the unnamed areas, the area commonly known as Mobet, and area adjacent to the City of Rock Island (“Rock Island”); the unincorporated areas of Bureau County, Illinois, which include the area adjacent to the Village of Walnut (“Bureau”); and, the Township of Preemption (“Preemption”).¹³ Accordingly, we find that Mediacom has demonstrated the existence of “low penetration” effective competition in the above-noted Communities.

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party to the petition. Mediacom further states that in all other instances, the information given in the petition about Cambridge, such as the number of DBS subscribers, census data, channel lineups and other pertinent information, is correct. *See* Erratum at 2-3 (March 15, 2007). We note, however, that Mediacom is incorrect when it says that Cambridge has a 17.14 % DBS penetration rate; Cambridge actually has a DBS penetration rate of 21.73%. It is the community of Cordova with a 17.14% DBS penetration rate. Regardless, we find that all of the other pertinent information submitted regarding both Cambridge and Cordova is correct.

¹⁰ Mediacom Petition at 7. Mediacom states that its subscriber numbers are estimates derived from its billing system using addresses to which Mediacom provides service. Mediacom Petition at n.20.

¹¹ Aledo (391 DBS subscribers ÷ 1,506 Aledo households = 25.96%); Cambridge (186 DBS subscribers ÷ 856 Cambridge households = 21.73%); Cordova (42 DBS subscribers ÷ 245 Cordova households = 17.14%); Geneseo (508 DBS subscribers ÷ 2,707 Geneseo households = 18.77%); Hillsdale (45 DBS subscribers ÷ 219 Hillsdale households = 20.55%); Neponset (34 DBS subscribers ÷ 200 Neponset households = 17.00%); Port Byron (148 DBS subscribers ÷ 623 Port Byron households = 23.76%); Sherrard (43 DBS subscribers ÷ 271 Sherrard households = 15.87%); Viola (79 DBS subscribers ÷ 383 Viola households = 20.63%); Village of Walnut (122 DBS subscribers ÷ 576 Village of Walnut households = 21.18%).

¹² 47b U.S.C. § 543(1)(1)(A).

¹³ Mediacom Petition at 8. Henry (817 Mediacom subscribers ÷ 20,056 Henry households = 4.07%); Rock Island (863 Mediacom subscribers ÷ 60,712 Rock Island households = 1.42%); Bureau (56 Mediacom subscribers ÷ 14,182 Bureau households = .39%); Preemption (52 Mediacom subscribers ÷ 677 Preemption households = 7.68%). Mediacom states that for purposes of its petition, the Mediacom subscriber numbers are estimates from Mediacom's billing system using addresses to which Mediacom provides service. Mediacom Petition at n.20.

III. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed by MCC Iowa LLC and Mediacom Illinois LLC in the above-named Communities **IS GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic service rates granted to any of the local franchising authorities overseeing MCC Iowa LLC and Mediacom Illinois LLC in the affected Communities **ARE REVOKED**.

9. This action is taken pursuant to delegated authority under Section 0.283 of the Commission's rules.¹⁴

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckert
Deputy Chief, Policy Division, Media Bureau

¹⁴ 47 C.F.R. § 0.283.